Supreme Court U.S.
FILED

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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

N.L. NEILSON,

Petitioner,

vs.

CITY OF CALIFORNIA CITY,

Respondent.

On Petition For Writ Of Certiorari
To The California Court Of Appeals
For The Fifth District

PETITION FOR WRIT OF CERTIORARI

N.L. Neilson
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Petitioner pro per

QUESTION PRESENTED

1. Is the flat rate parcel tax a violation of the Equal Protection Clause of of the 14th amendment of the United States Constitution?

2. Should the voting issue be examined under the strict scrutiny test rather than the rational basis test?

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JURISDICTION

The California Supreme Court denied review on Feb. 22, 2006. Appendix (A30), hereinafter (A[no.]).

The California Court of Appeal for the Fifth District denied the petition for rehearing on Nov 28, 2005, (A29), on its Opinion filed on Nov 3, 2005, (A1). Petitioner seeks review of that judgment/Opinion on a writ of certiorari.

The present petition is timely filed under 28 U.S.C. § 2101(c) and under Rule 13.1 of this Court.

The Equal Protection issues were properly raised.

This Court has jurisdiction under 28 U.S.C. § 1257(a) and Rule 10(c) to review on a writ of certiorari the judgment of a state court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV, Equal Protection Clause. California Constitution Articles XIII §1 and XIIIA § 4.

STATEMENT OF THE CASE

In March 2004, the City Council of the City of California City (City) passed Resolution No. 03-04-2099, which called a municipal election for June 8, 2004, and directed that voters be presented with a measure for a city-wide special tax of up to $75 per lot or parcel for each of the next three fiscal years. At the June 2004 special election, the proposed parcel tax was presented to the registered voters of the City as Measure L and passed with two-thirds majority of the votes.

From the Opinion (A2):

> "In this case, the flat-rate parcel tax (1) was assessed on the mere ownership of real property, (2) was not an ad valorem tax, and (3) was a valid special tax because it was approved by two-thirds of the relevant electorate and its revenues were dedicated to specific governmental purposes."

Only the registered voters in the City were allowed to vote on the tax measure. From the Opinion (A3):

> "Save Our Services! There is no city anywhere with a greater need to renew a special tax. We have over 50,000 privately-owned subdivided lots in the City, and approximately 3,800 registered voters. This means that every voter who votes for the special tax carries over 10 times the taxing power to benefit the City, - - - "

The Facts and Proceedings in the Opinion starting at (A2) goes into more detail and is included by reference.

- - -

The U.S. Constitution Equal Protection issues were raised in the complaints in the trial court, (A1):

> "The superior court sustained the city's general demurrer to the landowner's complaint, which alleged the parcel tax violated limitations on the taxation of real property contained in the California Constitution and violated the constitutional guarantee of equal protection."

The Equal Protection issues were raised in the Briefs to the Appellate Court and addressed in the Opinion: "III. Non-ad valorem real property taxes are constitutional" (A10) and "VI. Equal protection" re voting issue (A19). The Equal Protection issues were properly raised in the courts below.

ARGUMENT

A. The Court of Appeal Decision Fails to Follow the Opinions of the U.S. Supreme Court

In this case the tax is on the mere ownership of property. It is a fixed amount, $75, assessed to every parcel regardless of the value of the parcel. All states have in their constitution or statutes how a tax is to be assessed.

In *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336, 338 (1989), ("*Allegheny*")

> "The West Virginia Constitution guarantees to its citizens that, with certain exceptions, "taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value . . . ." Art. X, 1."

The States have broad powers to impose and collect taxes.

> "A State may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable." [...] "But West Virginia has not drawn such a distinction. Its Constitution and laws provide that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the State according to its estimated market value." *Allegheny, supra* 488 U.S. 336, 344 -345

West Virginia had not divided property into classes nor has California, that is not why the tax burdens in this case are unreasonable, it is the parcel tax where the tax burden is not in proportion to value.

> **"But the fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings."** *Allegheny, supra* 488 U.S. 336, 346 (emphasis added)

In this case the ratio of tax burden relative to property holdings for the parcel tax is more than 10,000 to 1.

B. Article XIII, section 1 of the California Constitution

This provides that all property is taxable and shall be assessed at the same percentage" of fair market value or an authorized "value standard other than fair market value." The clear import of this language, as well as the history of property taxation in this and other states, leads to the conclusion that a property tax must be ad valorem with few exceptions. Since its admission into the union, California has required uniformity of property taxation.

> ARTICLE 13 TAXATION SEC. 1. Unless otherwise provided by this Constitution or the laws of the United States:
>
> (a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.
>
> (b) All property so assessed shall be taxed in proportion to its full value.

In *Nordlinger V. Hahn* 505 U.S. 1, 4-5 (1992) ("*Nordlinger*") .

> "The adoption of Proposition 13 served to amend the California Constitution to impose strict limits on the rate at which real property is taxed and on the rate at which real property assessments are increased from year to year." [...] As enacted by Proposition 13, Article XIIIA of the California Constitution caps real property taxes at 1% of a property's "full cash value." § 1(a). "Full cash value" is defined as the assessed valuation as of the

> 1975-1976 tax year or, "thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." § 2(a). The assessment "may reflect from year to year the inflationary rate not to exceed 2 percent for any given year." § 2(b).

In *Nordlinger* Article XIIIA §§ 1 , 2 were at issue, to determine the property "value" to be assessed and the maximum tax rate or percentage used to determine the tax for each parcel pursuant to Article XIII §1. This case is distinguished from *Nordlinger* since the tax in this case is a set amount for every parcel regardless of value, the tax is not a percentage of value as required by Article XIII §1.

In *Thomas v. City of East Palo Alto*, (1997) 53 Cal.App.4th 1084 at 1092 (*Thomas*) the tax was unconstitutionally imposed as a property tax not apportioned to value.

> We can conceive of flat fee parcel taxes which might arguably pass constitutional muster under section 1. For instance, a flat fee of $ 100 per parcel for the transfer or rezoning of a parcel, assessed at the time of the transfer or application for rezoning, would not violate section 1, because it would be a valid excise tax based upon the use of the parcel; and its practical effect would not be to tax the ownership of the parcel, but instead to tax its use.

The City parcel tax is also similar to that in the *City of Oakland v. Digre* (1988) 205 Cal.App.3d 99; (*Digre*) case where the flat-fee "parcel tax" designed to raise revenue for the support of municipal services was a non-ad valorem general property tax prohibited by Article XIII, §1 of the California Constitution. *Id.*, at 109:

> As a property tax, Measure M violates article XIII, section 1 of the California Constitution. That section provides that "[all] property is taxable and shall be

> assessed at the same percentage" of fair market value or an authorized "value standard other than fair market value." The clear import of this language, as well as the history of property taxation in this state, leads to the conclusion that a property tax must be ad valorem. "Since its admission into the union, California has required uniformity of property taxation . . . . [It] is apparent that the mandated uniformity of taxation can be achieved only by applying to all property the same fraction or percentage of market value." (Safeway Stores, Inc. v. County of Alameda (1975) 51 Cal.App.3d 783, 786 [124 Cal.Rptr. 503]; see generally, English v. County of Alameda (1977) 70 Cal.App.3d 226, 234 [138 Cal.Rptr. 634]; 1 Ehrman & Flavin, op. cit. supra, § § 1:02-1:15, pp. 4-25.) A non-ad valorem property tax would destroy the uniformity scheme, and must be considered in violation of California Constitution, article XIII, section 1. Both the Attorney General and the legislative counsel have reached a similar conclusion. (70 ps.Cal.Atty.Gen. 153, 156-157 (1987); Ops. Cal. Legis. Counsel, No. 8471 (1987) School District: Taxation.)

Thomas and *Digre* clearly indicate a tax on the mere ownership must be ad-valorem or unconstitutional pursuant to Art XIII §1.

For a $2,000 vacant parcel to be taxed the same as a $20,000,000 developed parcel seems contrary to " . . so long as those divisions and burdens are reasonable." and " . . neither arbitrary nor capricious." The tax fails to follow the *Allegheny* Opinion of the U.S. Supreme Court and the cases related or included therein under the Equal Protection Clause.

C. Article XIIIA, section 4, special taxes

> "Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, *except ad valorem taxes on real property* or a transaction tax or sales tax on the sale of real property within such City, County or special district." (Art. XIII A, § 4, italics added.)

The California Constitution requires that taxes based on the mere ownership of real property must be ad valorem taxes. Art. XIIIA §4 is part of Proposition 13 that was meant to restrict abusive taxes, not create a loophole. If a special tax is arbitrary or capricious or the burdens are not reasonable it is a violation of the Equal Protection clause pursuant to the *Allegheny* case.

D. Strict scrutiny test

Since there is such a large difference in the tax burden and the more than 10 to 1 ratio of the registered voters to the substantially affected and directly interested absentee land owners the strict scrutiny test should be applied.

> "The United States Supreme Court held that the exclusion of otherwise qualified voters who were substantially affected and directly interested in the election issue must be reviewed under strict scrutiny." *Cipriano v. City of Houma* (1969) 395 U.S. 701

E. This Case Involves Questions of Exceptional Importance

U.S. Constitution Amen. XIV, Equal Protection Clause

> No State shall...deny to any person within its jurisdiction the equal protection of the laws.

"But the fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings." *Allegheny, supra* 488 U.S. 336, 346

In this case the ratio of tax burden relative to property holdings for the parcel tax is more than 10,000 to 1.

This is the first published case on the special tax of Article XIIIA §4 of the California Constitution being challenged on Equal Protection grounds.

Respectfully submitted,

N.L. Neilson, Petitioner May 18, 2006
pro per

Filed 11/3/05

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

N. L. NEILSON,

Plaintiff and Appellant, F046860

v. (Super. Ct. No. CV253401)

CITY OF CALIFORNIA CITY,

Defendant and Respondent. **OPINION**

APPEAL from a judgment of the Superior Court of Kern County. John I. Kelly, Judge.

N. L. Neilson, in pro. per., for Plaintiff and Appellant.

Aaron L. Katz, in pro. per., as Amicus Curiae on behalf of Plaintiff and Appellant.

Lemieux & O'Neill and W. Keith Lemieux for Defendant and Respondent.

Colantuono & Levin, Michael G. Colantuono and Amy C. Sparrow for the League of California Cities as Amicus Curiae on behalf of Defendant and Respondent.

Jennifer B. Henning for the California State Association of Counties as Amicus Curiae on behalf of Defendant and Respondent.

-ooOoo-

A nonresident landowner challenged a flat-rate parcel tax imposed by a city after the city's registered voters approved the tax by a two-thirds majority. The superior court sustained the city's general demurrer to the landowner's complaint, which alleged the parcel tax violated limitations on the taxation of real property contained in the California Constitution and violated the constitutional guarantee of equal protection.

The issues raised on appeal are (1) whether taxes based on the mere ownership of real property are constitutionally required to be ad valorem taxes; (2) whether the flat-rate parcel tax is a general tax and thus unconstitutional or, alternatively, is a special tax and therefore valid; (3) whether California law concerning voter eligibility requires that nonresident landowners affected by the tax be given the right to vote on the taxing measure; and (4) whether the equal protection clause prevents the city from using a residency requirement to determine who may vote on the tax when nonresident landowners are the largest source of revenue under the tax.

We hold that, as presently written, the California Constitution does not prohibit a tax on the mere ownership of real property if the tax is a special tax and not an ad valorem tax. In this case, the flat-rate parcel tax (1) was assessed on the mere ownership of real property, (2) was not an ad valorem tax, and (3) was a valid special tax because it was approved by two-thirds of the relevant electorate and its revenues were dedicated to specific governmental purposes. Furthermore, California law governing the qualification of voters establishes that the relevant electorate for the municipal election that approved the flat-rate parcel tax was the registered voters of the municipality. We also hold, under the rational basis test, that the equal protection clause does not require that nonresident landowners be given the right to vote on the taxing measure. Therefore, judgment is affirmed.

FACTS AND PROCEEDINGS

In March 2004, the City Council of City of California City (Council) passed Resolution No. 03-04-2099, which called a municipal election for June 8, 2004, and directed that voters be presented with a measure for a city-wide special tax of up to $75 per lot or parcel for each of the next three fiscal years. The municipal election was consolidated with other elections scheduled for that date.

At the June 2004 special election, the proposed parcel tax was presented to the voters of City of California City (City) as Measure L. The impartial analysis of Measure L by City attorney, which was set forth in the sample ballot and voter information pamphlet, stated:

"If this measure is approved by two-thirds of the voters, the City will be able to levy a special tax for three years commencing July 1, 2004. The maximum amount of tax the city can levy is $75 per lot or parcel per year. The City will use proceeds of the special tax to pay for police, fire and recreational services, and to repair streets, parks, water line replacement and repair, and building maintenance."

The argument in favor of Measure L was presented by the mayor, vice mayor, and Council members, and stated:

"Save Our Services! There is no city anywhere with a greater need to renew a special tax. We have over 50,000 privately-owned subdivided lots in the City, and approximately 3,800 registered voters. This means that every voter who votes for the special tax carries over 10 times the taxing power to benefit the City, because every one of those property owners supports the city with their special tax payments. While some absentee owners object to the tax, the vast majority of them understand that it holds up property values and therefore their investment.

"What we pay now for special tax is our personal investment in our city; public safety services, parks and recreation, street repair and maintenance, and this time, funding for emergency repairs of water main breaks that cost the city hundreds of thousands of dollars every year. The only practical way to pay for the infrastructure needs of our city is a special tax. Passage of Measure 'L' is a renewal of our previous $75.00 special tax for three years, not a new tax on top of old. [¶] ...

"The most important reason for a California City special tax is that it is the only one we do not share with County, State or Federal agencies. Vote 'Yes' on Measure 'L'. Save Our Services."

Of the 4,011 registered voters in City, approximately 40.1 percent voted. Measure L passed by a vote of 1,128 (70.11 percent) to 481 (29.89 percent), which exceeded a two-thirds majority requirement.

On July 6, 2004, Council passed Resolution No. 07-04-2130 levying the special tax that the voters had approved. That resolution stated in part:

"2. Special Tax Levy.

"A special tax in the amount of $75.00 per lot or parcel is levied for the fiscal year commencing July 1, 2004. The City Clerk is authorized and directed to transmit a certified copy of this resolution to the Kern County Tax Collector and the Kern County Auditor-Controller with a request for the tax to be levied and collect [sic] on the property tax rolls.

"3. Special Tax Expenditures.

"(a) The proceeds of the special tax levy shall be deposited into a special tax fund to be spent, as nearly as practicable, as follows:

"(1) Fire Services	$ 800,000
"(2) Parks and Recreation	$ 320,000
"(3) Police Services	$ 800,000
"(4) Water Services	$ 480,000
"(5) Street Improvements	$ 800,000
"TOTAL	$3,200,000

"(b) On or before August 1, 2004, the City Council shall reconcile expenditures of special tax proceeds. Future expenditures within a category will be increased if the expenditure for the 2004-2005 fiscal year is less than the above amounts. Future expenditures within a category will be reduced if the expenditure for the 2004-2005 fiscal year exceeds the above amount.

Unexpended (surplus) amounts shall be reserved for future expenditure within the category with the surplus. The annual reconciliation will be reported.

"4. Compliance.

"The City Council certifies this tax complies with California Constitution, Article XIII D."

Within three weeks of the passage of the foregoing resolution by Council, plaintiff filed a complaint for declaratory and injunctive relief to invalidate the $75 parcel tax. The complaint alleged, as relevant here, that (1) the tax violated section 1 of article XIII A of the California Constitution[1], (2) the tax was not a "special tax" for purposes of section 4 of article XIII A, (3) the tax violated the equal protection clause by making absentee landowners subsidize local residents, and (4) the tax amounted to taxation without representation because the vast majority (85 percent) of those paying the tax were absentee landowners who could not vote on the tax.

City filed a demurrer, and the hearing was scheduled for September 30, 2004. Prior to the hearing, plaintiff submitted a first amended complaint, but the superior court did not receive a copy until the beginning of the hearing. The superior court sustained the demurrer to the original complaint, stated it would treat the first amended complaint as plaintiff's attempt to correct the failure to state a claim, set the matter for a further hearing on October 29, 2004, and told plaintiff that if he wanted to file further papers he should do so by October 22, 2004. Plaintiff filed a second amended complaint on October 8, 2004.

Shortly thereafter, City filed a supplemental demurrer to the first and second amended complaints based on the ground that the

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[1] All further references to articles are to the California Constitution.

plaintiff failed to allege facts sufficient to demonstrate that the $75 parcel tax was unlawful. City argued that the flat-rate parcel tax was a special tax dedicated to specific purposes and, "as a legal matter, the fact that the tax [wa]s dedicated to multiple special purposes does not in any [way] diminish its character as a special tax."

In opposition to the supplemental demurrer, plaintiff argued, among other things, that there must be some limit on when a series of stacked "specific purposes" crosses the line into "general governmental services" and, thus, the tax involved is a "general tax" rather than a "special tax." Plaintiff further argued that the determination of when that line was crossed required a trial on the merits. Finally, at oral argument on the supplemental demurrer, plaintiff suggested that the trial court grant him summary judgment, and concluded: "everything we wanted in the record ... is in there.... So everything we want to take up is in there."

The superior court sustained the demurrer without leave to amend and, on December 20, 2004, signed and filed a judgment in favor of City.

On appeal, the League of California Cities, joined by the California State Association of Counties, have filed an amici curiae brief in support of the position of respondent City, and Aaron L. Katz has filed an amicus curiae brief in support of plaintiff's position.[2]

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[2]Mr. Katz states he is the plaintiff in two actions filed in the County of Santa Clara that challenge voter approval of a special tax and a bond issue on the ground that he was not allowed to vote in those elections despite being a general partner in a partnership that owned real property subject to the tax. Presently, it appears the two actions have been combined and, because of a notice of appeal filed by Mr. Katz on June 29, 2005, are before the Sixth Appellate District. (*Katz v. El Camino Hospital District et al.* (No. H028994).)

DISCUSSION

I. Standard of review

An appellate court must independently decide questions of law without deference to the trial court's conclusions. *(Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407.) A demurrer tests only the sufficiency of the pleadings and, as such, raises only a question of law. (*Cellular Plus, Inc. v. Superior Court* (1993) 14 Cal.App.4th 1224, 1231.) Also, a dispute over the meaning of a constitutional provision presents a question of law. (*Citizens for Hatton Canyon v. Dept. of Transportation* (2004) 112 Cal.App.4th 838, 843.)

A. Demurrers

In reviewing a demurrer that is sustained without leave to amend, an appellate court assumes the truth of (1) all facts properly pleaded by the plaintiff, (2) all facts contained in exhibits to the complaint, (3) all facts that are properly the subject of judicial notice, and (4) all facts that reasonably may be inferred from the foregoing facts. (See Code Civ. Proc., §§ 430.30, 430.70; Evid. Code, §§ 452, 459; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Satten v. Webb* (2002) 99 Cal.App.4th 365, 375 [exhibits]; *Rose v. Royal Ins. Co.* (1991) 2 Cal.App.4th 709, 716 [inferences drawn from allegations].) The reviewing court does not assume the truth of contentions, deductions or conclusions of law. *(Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.)

The reviewing court must reverse the judgment if (1) the complaint, liberally construed, has stated a cause of action under any possible legal theory; or (2) the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. (Code Civ. Proc., § 452 ["allegations must be liberally construed, with a view to substantial justice between the parties"]; *Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.) The burden of proving a reasonable possibility of cure is squarely on the plaintiff. (*Id.* at p. 318.)

B. Determining meaning of constitutional provisions

"The principles of constitutional interpretation are similar to those governing statutory construction. In interpreting a constitution's provision, our paramount task is to ascertain the intent of those who enacted it. [Citation.] To determine that intent, we 'look first to the language of the constitutional text, giving the words their ordinary meaning.' [Citation.] If the language is clear, there is no need for construction. [Citation.] If the language is ambiguous, however, we consider extrinsic evidence of the enacting body's intent. [Citations.]" (*Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 122.)

The principle that clear language does not need construction, however, is subject to the exception that the literal language of a constitutional amendment may be disregarded to avoid absurd results and to give effect to the apparent intent of the voters. (*Provigo Corp. v. Alcoholic Beverage Control Appeals Bd.* (1994) 7 Cal.4th 561, 567; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

II. Background on Propositions 13, 62 and 218

The parties have cited various provisions of Propositions 13, 62 and 218, which one writer has characterized as parts of a "taxpayer revolt." (Comment, *Is Nothing Certain but Death? The Uncertainty Created by California's Proposition 218* (2001) 35 U.S.F. L.Rev. 385, 388 (Comment).) We begin with a brief overview of those propositions.

A. Proposition 13

California's voters approved Proposition 13 in 1978, and its provisions, incorporated into article XIII A, (1) limit ad valorem property taxes to 1 percent of a property's assessed value, (2) limit increases in assessed value to 2 percent per year unless ownership of the property has changed, and (3) require two-thirds voter

approval of any "special tax." (Art. XIII A, §§ 1, 2, subds. (a) & (b), 4.)

The constraints of Proposition 13 caused local governments to look to new means of generating revenue. One local government imposed a payroll and gross receipts tax and used the proceeds for general revenue purposes. *(City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47.) The California Supreme Court held this type of tax was a "general tax" and not a "special tax" because the proceeds were placed in the general fund to be used for general governmental purposes. (*Id.* at p. 57.) Consequently, the tax was not subject to the two-thirds vote requirement section 4 of article XIII A imposed on special taxes.

B. Proposition 62

In 1986, California voters approved Proposition 62, which added sections 53720 through 53730 to the Government Code. "The manifest purpose of Proposition 62 as a whole was to increase the control of the citizenry over local taxation by requiring voter approval of all new local taxes imposed by all local governmental entities: the measure defines broadly and inclusively both the taxes (§ 53721) and the entities (§ 53720) to which it applies." *(Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 235.)

The voter approval requirements are set forth in Government Code sections 53722 and 53723. Section 53722 provides that a local government or district may not impose "any *special tax* unless and until such special tax is submitted to the *electorate of the local government*, or district and approved by a *two-thirds* vote of the voters voting in an election on the issue." (Italics added.) Section 53723 provides that "[n]o local government, or district, whether or not authorized to levy a property tax, may impose any *general tax* unless and until such general tax is submitted to the *electorate of the local government*, or district and approved by a *majority vote* of the voters voting in an election on the issue." (Italics added.)

C. Proposition 218

After Proposition 62, local government resorted to the use of fees and assessments, which did not require voter approval, to fill the void. The increase in assessments and fees imposed by local governments led California voters, in November 1996, to approve Proposition 218, which was designed to provide voters with control over taxes regardless of whether they were called assessments, fees, or charges. (Comment, *supra*, 35 U.S.F. L.Rev. at pp. 394-395.)

The Fourth Appellate District described the adoption of Proposition 218 as follows:

> "Proposition 218 allows only four types of local property taxes: (1) an ad valorem property tax; (2) a special tax; (3) an assessment; and (4) a fee or charge. ([A]rt. XIII D, § 3, subd. (a)(1)-(4); see also [*id.*], § 2, subd. (a).) It buttresses Proposition 13's limitations on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges." *(Howard Jarvis Taxpayers Assn. v. City of Riverside* (1999) 73 Cal.App.4th 679, 682.)

Sections 3 and 4 of Proposition 218 amended the California Constitution by adding article XIII C, which concerns voter approval of local tax levies, and article XIII D, which limits the ability of local governments to impose assessments, fees, and charges. For example, article XIII D prohibits fees or charges for "general governmental services." (Art. XIII D, § 6, subd. (b)(5).)

Proposition 218 is significant in this appeal because of its definitions and because, like Proposition 13, it includes a provision requiring that special taxes receive two-thirds approval. "No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote." (Art. XIII C, § 2, subd. (d).)

III. Non-ad valorem real property taxes are constitutional

In his opening brief, plaintiff asks this court to settle a question of law concerning the meaning of a particular phrase in section 4 of

article XIII A. That section provides in full:

"Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, *except ad valorem taxes on real property* or a transaction tax or sales tax on the sale of real property within such City, County or special district." (Art. XIII A, § 4, italics added.)

Plaintiff contends that (1) the California Constitution requires that taxes based on the mere ownership of real property must be ad valorem taxes, and (2) section 4 of article XIII A cannot be read to mean local governments are granted the authority to adopt non-ad valorem taxes, whether general or special, on the mere ownership of real property.[3]

Another constitutional provision relevant to plaintiff's argument, however, is the limitation on property taxes, assessments, fees and charges set forth in Proposition 218:

"(a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

"(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

"(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

"(3) Assessments as provided by this article.

"(4) Fees or charges for property related services as provided by this article." (Art. XIII D, § 3.)

The use of the phrase "[a]ny special tax" and the language in article XIII D, section 3, subdivision (a) that introduces the enumerated exceptions clearly establish that a special tax receiving a two-thirds vote may be imposed "upon any parcel of property or

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[3]At oral argument, plaintiff contrasted taxes based on mere ownership with taxes based on other grounds, such as the use to which the real property is put.

upon any person as an incident of property ownership." Therefore, to harmonize the constitutional provisions we must reject plaintiff's interpretation of section 4 of article XIII A. Instead, we conclude that a non-ad valorem tax may be imposed upon real property if the tax is a "special" tax dedicated to specific purposes and approved "by a two-thirds vote of the qualified electors of" the city, county, or special district imposing the tax. (Art. XIII A, § 4.)

IV. Plaintiff's allegations, accepted as true, fail to demonstrate that the flat-rate parcel tax is not a valid "special tax"

City does not dispute that a flat-rate parcel tax is unconstitutional if it is a general tax. (See City of *Oakland v. Digre* (1988) 205 Cal.App.3d 99 [general, flat-fee parcel tax was invalid under art. XIII, § 1]; *Thomas v. City of East Palo Alto* (1997) 53 Cal.App.4th 1084 [general flat-fee parcel tax was a property tax and not an excise tax; question whether it was a "special tax" not reached because two-thirds voter approval not obtained].) City contends, however, that the superior court correctly sustained the demurrer because the record conclusively establishes that its $75 flat-rate parcel tax is not a general, but a special tax.

A. Definitions of general tax and special tax

Pursuant to article XIII C, section 1, subdivisions (a) and (d), added by Proposition 218 in 1996, the term "general tax" means "any tax imposed for general governmental purposes," and a "special tax" is "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund." To prevent the creation of a new category of local taxes, Proposition 218 also provided that "[a]ll taxes imposed by any local government shall be deemed to be either general taxes or special taxes." (Art. XIII C, § 2, subd. (a).) Accordingly, the two types of taxes are distinguished by the purposes for which they were

imposed, not the activity or rights on which they are imposed[4].

In *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106 Cal.App.4th 1178, the appellate court addressed the dividing line between general and special taxes created by the use of the term "specific purposes" in the definition of the latter: "Pursuant to these definitions, a tax is special whenever expenditure of its revenues is limited to specific purposes; this is true even though there may be multiple specific purposes for which revenues may be spent. [Citation.] A tax is general only when its revenues are placed into the general fund and are available for expenditure for any and all governmental purposes. [Citation.]" (*Id.* at p. 1185.)

The *Roseville* court then determined that a utility user's tax, which generated revenues solely for police, fire, parks and recreation, and library services, was a "special tax" because it was imposed for specific purposes. (*Howard Jarvis Taxpayers Assn. v. City of Roseville, supra*, 106 Cal.App.4th at pp. 1183, 1186.) This was true even though those purposes accounted for approximately 50 percent of the city's general fund expenditures. (*Id.* at p. 1187.) Because the utility user's tax had received only a majority approval and not two-thirds voter approval, the court held it was invalid. (*Id.* at p. 1189.) In reaching its holding, the court emphasized its view that the city had gained an advantage with the voters by announcing the revenues generated would be limited to specific purposes. (*Ibid.*)

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[4]Heading A.6 of plaintiff's reply brief refers to special purposes rather than "specific purposes," which is the term used in the constitutional definition of special taxes and in Government Code section 53721. Plaintiff may have picked up the term "special purpose" from this court's opinion in *County of Fresno v. Malmstrom* (1979) 94 Cal.App.3d 974, 983, where we stated that a "'special tax' is a tax collected and earmarked for a special purpose[.]" That definition of "special tax," however, was superseded by the subsequent enactment of Propositions 62 and 218.

B. Plaintiff's allegation that the parcel tax is a sham

Plaintiff alleged and continues to argue that the parcel tax is a sham, designed to avoid Proposition 13's limit on ad valorem property taxes. He approaches this assertion in two ways.

First, plaintiff argues that the parcel tax is a general tax because the purposes for which its levies can be spent—public safety services, parks and recreation, street repair and maintenance, and water services—are, by their nature, "general governmental purposes" for City. This construction of "general" is not convincing because it does not fit well with the dividing line created by the constitutional definitions, which looks to the question whether the purposes for which the tax can be used have been specified or not. The specification of purposes is important because it is the means for providing voters with control over the use of tax revenues. *(Howard Jarvis Taxpayers Assn. v. City of Roseville, supra*, 106 Cal.App.4th at p. 1189.) When purposes are not specified, then the local government has the discretion to determine how the funds will be spent. In addition to the obstacles raised by the constitutional definitions, plaintiff has not adequately distinguished the list of purposes for which City's flat-rate parcel tax could be used from the list of purposes for the special tax in *Roseville*. (*Id.* at p. 1187.) Consequently, case law supports the proposition that police, fire, and parks and recreation services can be "specific purposes" when specified to voters, and they are not necessarily "general governmental purposes." (Art. XIII C, § 1, subds. (a) & (d).) Plaintiff has cited no authority that contradicts the holding in *Roseville* or supports his view that certain governmental expenditures, like salaries for local police, are by their nature for "general governmental purposes." Plaintiff may have confused "general governmental purposes" with "general governmental services," which is a term used in article XIII D, section 6, subdivision (b)(5). That provision applies not to taxes, either general or special, but instead to fees or charges. Plaintiff

does not assert that the parcel tax is a fee or charge.[5]

Second, in opposing the demurrer, plaintiff supported his contention that the parcel tax is a sham special tax, and really a general tax, by arguing that there must be some limit on the specific purposes that can be stacked together before the line is crossed and the revenues are used for "general governmental services." Again, however, plaintiff fails to provide supporting authority. Further, plaintiff ignores the opinion in *Roseville*, a case in which the designated purposes of the special tax were so numerous as to account for some 50 percent of the city's general fund budget. (*Howard Jarvis Taxpayers Assn. v. City of Roseville, supra*, 106 Cal.App.4th at p. 1187.) Finally, we note that the use of the plural

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[5]Amicus curiae Katz does contend the parcel tax is an invalid assessment. The apparent basis for this contention is Katz's assertion that City admitted the tax was an assessment by noting in two post-election resolutions that the tax "complie[d] with the applicable provisions of Article XIII D." In another argument made neither here nor below by plaintiff, Katz contends the parcel tax is invalid because neither the resolution by which Council sent the proposed tax to the voters nor Measure L itself contained explicit accountability measures required by Government Code sections 50075.1 and 53724.

Amicus curiae must take the case as he or she finds it. (*California Assn. for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1274-1275.) "'"[A]n appellate court will consider only those questions properly raised by the appealing parties ..., and any additional questions presented in a brief filed by an amicus curiae will not be considered [citations]."' [Citation.]" (*Younger v. State of California* (1982) 137 Cal.App.3d 806, 813-814.) While this rule is not absolute, and an appellate court has discretion to consider new issues raised by an amicus curiae that concern only matters of law and involve important issues of policy (*Lavie v. Proctor & Gamble Co.* (2003) 105 Cal.App.4th 496, 503), we decline to do so here because both of the suggested new issues have factual aspects. First, it is plaintiff's burden to show a reasonable probability that he can include the necessary factual allegations to support these new theories, and plaintiff has not carried that burden. For instance, Measure L is not itself part of the appellate record and, thus, we cannot assess the probability that he can adequately allege the accountability provisions of the Government Code were violated. Second, both plaintiff and amicus curiae Katz have asked that this court not remand the case for additional pleadings because the third year of the flat-rate parcel tax would have been assessed before the trial court would have ruled on any amended pleadings. In short, the factual aspects of the new theories would lead to a lapse of time that plaintiff wishes to avoid.

"specific purposes" in the definition of "special tax" shows that the enactors contemplated that a special tax could be used for more than one purpose without losing its status as a special tax. (See generally *Silvio v. Ford Motor Co.* (2003) 109 Cal.App.4th 1205, 1208-1209 [use of plural in statutory requirement].)

Plaintiff does not suggest a means for determining at what point a special tax becomes a general tax because of the number of purposes for which its revenues may be used. Though we can conceive of a special tax that permits expenditures for so many specific governmental purposes that the parts might swallow the whole, plaintiff has not pled sufficient facts to show that the parcel tax here is such a tax. Neither does plaintiff suggest how he might cure this defect were he allowed yet another chance to plead.

Plaintiff's mere unsupported assertion that this tax is a sham—not a special but a general tax—is not sufficient to overcome City's demurrer (*Aubry v. Tri-City Hospital Dist., supra*, 2 Cal.4th at pp. 966-967), and he suggests no way in which he could improve his pleading. We therefore need not decide whether a local electorate may, by a two-thirds majority, approve as a special tax that which, in effect, allows expenditures beyond those provided for by ad valorem property taxes for all or virtually all governmental purposes. It is enough here to note that plaintiff has failed to plead sufficient facts to show that City's parcel tax is not a valid special tax and has failed to show a reasonable possibility that the pleading deficiency can be cured by amendment. (See *Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.)

V. Who are the "qualified electors"?

Section 4 of article XIII A states: "Cities, counties and special districts, by a two-thirds vote *of the qualified electors* of such district, may impose special taxes on such district ...." (Italics added.)

Plaintiff contends that the affected property owners, not the registered voters of City, were the "qualified electors" for purposes

of section 4 of article XIII A. By submitting the flat-rate parcel tax to City's registered voters, plaintiff claims, City disenfranchised 90 percent of the property owners.

After article XIII A was added to the California Constitution by the adoption of Proposition 13, the idea that a special tax must obtain two-thirds approval also was addressed in Propositions 62 and 218.

Proposition 62 enacted Government Code section 53722, which provides: "No local government or district may impose any special tax unless and until such special tax is submitted to *the electorate of the local government*, or district and approved by a two-thirds vote of the *voters voting in an election on the issue*."

Similarly, Proposition 218 provides that "[n]o local government may impose, extend, or increase any special tax unless and until that tax is submitted to *the electorate* and approved by a two-thirds vote." (Art. XIII C, § 2, subd. (d), italics added.)

City contends that section 4 of article XIII A should be harmonized with section 2 of article XIII C and that various definitions in place at the time Proposition 218 was adopted lead to the conclusion that City's resident voters are the relevant electorate.[6]

The Elections Code defines "elector" to mean "any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 15 days prior to an election." (Elec. Code, § 321.) The Elections Code does not contain a formal definition of the word "qualified," but it does contain variations of

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[6]The only statutory definition we have located of "qualified elector" is in the Public Utilities Code. "'Elector,' 'voter,' or 'qualified elector,' means a voter whose name appears on the great register of the county in which the district is located, or any supplement thereto, allowed by law to be used to determine the eligibility of persons to vote at municipal or county elections, and whose address as it appears on the great register or supplement is in the same unincorporated territory as the address given by him on the certificate or petition that is signed by him." (Pub. Util. Code, § 15505.

that word that are useful in determining its meaning. For example, division 2 of the Elections Code is titled "Voters" and it contains chapters titled "Voter Qualifications" (ch. 1, beginning with § 2000) and "Registration" (ch. 2, beginning with § 2100). Pursuant to section 2000 of the Elections Code, "[e]very person who *qualifies* under Section 2 of Article II of the California Constitution and who complies with this code governing the registration of electors may vote at any election held within the territory within which he or she resides and the election is held." (Italics added.) Article II, section 2 provides that a "United States citizen 18 years of age and resident in this state may vote." Also, Elections Code section 359 provides that "voter" means "any elector who is registered under this code."

Based on the foregoing provisions, we conclude the phrase "qualified electors of such district" (art. XIII A, § 4) means the registered voters of City who voted in the election. First, the prepositional phrase "of such district" means City because the tax is imposed by City on all parcels within its geographical limits. Second, the term "qualified electors" means registered voters. Third, "two-thirds vote" means two-thirds or more of the votes cast in the election at issue. Thus, by combining these terms, section 4 of article XIII A required the special tax to be approved by two-thirds of City's registered voters who voted in the election concerning Measure L.

We reject plaintiff's different construction because the voting eligibility requirements that he proposes are set forth in article XIIID in regards to special assessments. We apply a fundamental rule of construction: "'Where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed.'" (*City of Port Hueneme v. City of Oxnard* (1959) 52 Cal.2d 385, 395; see also *Thompson v. Department of Corrections, supra*, 25 Cal.4th at p. 122 [principles

of constitutional interpretation are similar to those of statutory construction].)

VI. Equal protection

Plaintiff argues the scheme by which voter approval was obtained for Measure L violated equal protection because City did not enfranchise nonresident property owners with the right to vote on the measure.

Our analysis of such a discrimination claim starts with the basic principle of "one person, one vote" that the United States Supreme Court has derived from the equal protection clause of the Fourteenth Amendment of the federal Constitution.[7] *(Reynolds v. Sims* (1964) 377 U.S. 533 [legislative apportionment system that gave districts with 25 percent of population a majority of representatives in both houses violated equal protection requirement that votes be given equal weight].) The "one person, one vote" doctrine addresses (1) the dilution of one's vote in comparison to the vote of another and (2) the denial of a person's right to vote through eligibility criteria that selectively distribute the franchise. (See Cole, *Special Assessment Law Under California's Proposition 218 and the One-Person, One-Vote Challenge* (1998) 29 McGeorge L.Rev. 845, 872.) Plaintiff's claim involves the latter category.

A very useful introduction and summary of the law regarding equal protection and the right to vote was published by Division Four of the First Appellate District in *Hoffman v. State Bar of California* (2003) 113 Cal.App.4th 630. That discussion will not be repeated here except for its description of restricting the right to

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[7] "No State shall ... deny to any person within its jurisdiction the equal protection of the laws." (U.S. Const., amend. XIV, § 1.) Similarly, article I, section 7, subdivision (a) of the California Constitution states in part: "A person may not be ... denied equal protection of the laws ...."

vote to residents, which is at the heart of plaintiff's equal protection challenge:

> "(d) *Residency Restrictions*: Bona fide residency is another acceptable restriction on the franchise. Simply put, states may require voters to be bona fide residents of the relevant political subdivision. [Citations.] As one commentator has explained: '[I]n deciding who may and who may not vote in its elections, a community takes a crucial step in defining its identity.' (Tribe, American Constitutional Law (2d ed. 1988) Rights of Political Participation, § 13-10, p. 1084.) '[T]he rule that a state or municipality may restrict the franchise to its bona fide residents ... recognizes that nonresidents may be affected by and interested in what a state or municipality does, but nonetheless accepts *territory* as the best available means of drawing a boundary for purposes of the franchise.' (*Id.*, § 13-12, pp. 1088-1089, fn. omitted.)" (*Hoffman v. State Bar of California, supra*, at pp. 644-645.)

The United States Supreme Court has considered an equal protection claim brought against a city by nonresidents who were not allowed to vote in its elections. *(Holt Civic Club v. City of Tuscaloosa* (1978) 439 U.S. 60 (*Holt*).) People residing in Holt, a small, unincorporated community on the outskirts of the City of Tuscaloosa, challenged an Alabama statute that subjected Holt residents to the city's police and sanitation regulations, to the criminal jurisdiction of the city's courts, and to the city's power to license businesses, trades, and professions, but did not give them the right to participate in the political processes of the city by voting in its elections. (*Id.* at pp. 61-63.) The United States Supreme Court denied the equal protection challenge and stated:

> "From [our earlier] voting qualifications cases a common characteristic emerges: The challenged statute in each case denied the franchise to individuals who were physically resident within the geographic boundaries of the

> governmental entity concerned. [Citations.] No decision of this Court has extended the 'one man, one vote' principle to individuals residing beyond the geographic confines of the governmental entity concerned, be it the State or its political subdivisions. On the contrary, our cases have uniformly recognized that a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders. [Citations.]" (*Holt, supra*, at pp. 68-69.)

Plaintiff and amicus curiae Katz contend that City must show a compelling state interest to justify its failure to include nonresident landowners among the voters allowed to vote on Measure L. (See *Curtis v. Board of Supervisors* (1972) 7 Cal.3d 942, 963 [statute that allowed nonresident landowners to prevent residents from voting on proposed incorporation of area into a city struck down because it lacked a compelling state interest].) Among other things, they contend this level of strict scrutiny is required because the measure primarily affected nonresident landowners.

Based on existing case law, we reject the strict scrutiny test in favor of applying the rational basis test to the facts pled in this case. Strict scrutiny is used to protect the right to vote of those who are *otherwise qualified to vote*. Someone otherwise qualified to vote could be characterized has having a "fundamental" interest in the right to vote, which may not be infringed absent a compelling state interest. But strict scrutiny is not used to create a right to vote in nonresidents who are not otherwise qualified.

For instance, in *Kramer v. Union Free School Dist. No. 15* (1969) 395 U.S. 621, 627, the United States Supreme Court stated that "if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest."

Similarly, a Louisiana law that stated only property taxpayers

could vote in elections to approve the issuance of revenue bonds by a municipal utility system was declared unconstitutional. (*Cipriano v. City of Houma* (1969) 395 U.S. 701.) The United States Supreme Court held that the exclusion of otherwise qualified voters who were substantially affected and directly interested in the election issue must be reviewed under strict scrutiny.

In *City of Phoenix v. Kolodziejski* (1970) 399 U.S. 204, the United States Supreme Court ruled that restricting the franchise to real property taxpayers in a general obligation bond issue was unconstitutional because the interests of property owners and nonproperty owners in a general obligation bond issue were not sufficiently disparate to justify excluding those owning no real property. Regardless of real property ownership, all residents of the city (1) had a common interest in the facilities that the bond issue would make available and (2) would be substantially affected by the outcome of the election in terms of the benefits provided and the obligations incurred. (*Id.* at pp. 209-210.)

From these three United State Supreme Court cases, the following basic principle can be derived: "[A]s long as the election in question is not one of special interest, any classification restricting the franchise on grounds other than residence, age, and citizenship cannot stand unless the district or State can demonstrate that the classification serves a compelling state interest. [Citations.]" (*Hill v. Stone* (1975) 421 U.S. 289, 297.)

In this case, the election is not one of special interest in that Measure L involved the taxing of all parcels within the boundaries of City, and the expenditure of those funds provides benefits that are not limited to special interests. Consequently, we conclude the rational basis test should apply.

Prior to applying the rational basis test in this case, we observe that cases exist that say a local entity *may* base the right to vote on land ownership in certain situations without violating equal protection. But that is very different from holding that equal

protection *requires* that persons owning land within the entity's boundaries be given the right to vote. (See *Salyer Land Co. v. Tulare Water District* (1973) 410 U.S. 719 [property-based voting scheme for the election of the board of directors of a California water storage district upheld]; *Bjornestad v. Hulse* (1991) 229 Cal.App.3d 1568, 1589-1592 [discussing cases that applied rational basis test to uphold voting scheme that includes both residents and nonresidents against claim that vote of residents was unconstitutionally diluted].) We are unaware of any case holding that equal protection of the laws *requires* a government entity to extend the right to vote to nonresidents who own property within the geographic boundaries of that entity. Such a requirement would be contrary to our Supreme Court's statement that "residents have a constitutional right to vote in municipal elections [citation]; the nonresident landowners have no such right [citation]." *(Curtis v. Board of Supervisors, supra,* 7 Cal.3d at pp. 962-963.)

The closest analogy to plaintiff's situation of which we are aware occurred in *Massad v. City of New London* (1993) 43 Conn.Supp. 297 [652 A.2d 531]. In that case, city voters were presented with a referendum for the approval of a budget and tax rate ordinance. Nonresidents who owned taxable property within the city challenged the requirement that voters be residents of the city. Relying on *Holt*, the court determined a rational basis existed for excluding nonresidents from voting in city elections because local residents have a greater knowledge and interest in local affairs, while nonresident property owners would mainly be interested in lower taxes. (*Massad v. City of New London, supra,* at p. 311 [652 A.2d at p. 538].) The court also stated:

> "New London's determination that persons who want to vote on city matters must also reside within its boundaries is a reasonable exercise of its discretion and within the power granted to it to run its own affairs, which is tailored to legitimate governmental concerns and is not overridden by

the interests of persons owning taxable property in the town who prefer to live elsewhere." (*Id.* at pp. 312-313 [652 A.2d at p. 539].)

Accordingly, the court concluded that the residency requirement did not violate the Fourteenth Amendment to the United States Constitution or the equal protection provision of the Connecticut Constitution. (*Massad v. City of New London, supra*, 43 Conn.Supp. at p. 313 [652 A.2d at p. 539].)

As in *Massad*, we conclude that restricting the vote on Measure L to the residents of City was rationally based. City could have determined that the residents are most knowledgeable and interested in all aspects of local affairs, on both the revenue and expenditure side of its ledger. Consequently, the residency requirement that limited who could vote on Measure L did not violate the equal protection clause of the United States Constitution. Similarly, the equal protection clause in article I, section 7 of the California Constitution was not violated. (See *Hoffman v. State Bar of California, supra*, 113 Cal.App.4th at p. 641.)

DISPOSITION

The judgment is affirmed.

DAWSON, J.

WE CONCUR:

HARRIS, Acting P.J.

LEVY, J.

Filed Dec 20 2004

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

N. L. NEILSON, Plaintiff, v. CALIFORNIA CITY, a city; [...] Defendants.

CASE NO. **253401, JIK**
[Complaint Filed: 7-26-2004
Notice of Appeal Filed 11-24-2004
Appellate Case No. **F046860**]

(xxxxxxx) **JUDGMENT**

TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND ALL PARTIES AND THEIR ATTORNEY OF RECORD:

On October 29, 2004, in Department 9 of the above-entitled court the Honorable John I. Kelly, judge presiding, the Court made the order:

"The Court's going to sustain the demurrer without leave to amend as to the first and the second amended Complaints.

The Court will dismiss the Complaint with prejudice and order the City provide an order memorilizing the above ruling.

That will be my order."

The City prepared an Order re Demurrer which was signed by this Court and filed on November 19, 2004.

//

JUDGMENT

WHEREFORE, this Court hereby orders and adjudges as follows:

The Demurrer having been sustained without leave to amend

and pursuant to the order rendered in open court on October 29, 2004 the complaint was/is dismissed with prejudice, Judgment is awarded in favor of California City and against Plaintiff and Interested Persons.

Dated: 12-20-04

JOHN I. KELLY
Judge of the Superior Court

Filed Nov 19 2004

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN

N. L. NEILSON, Plaintiff, v. CALIFORNIA CITY, a city; [....] Defendants.

CASE No. S-1500-CV-253401, JIK
[xxxxx] ORDER RE DEMURRER TO PLAINTIFF'S COMPLAINT
[...]

TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND ALL PARTIES AND THEIR ATTORNEY OF RECORD:

On October 29, 2004, in Department 9 of the above-entitled court, the Honorable John I. Kelly, judge presiding, the Court heard argument on the Demurrer to Plaintiff's Complaint to Invalidate the $75 Annual Real Property Tax, Measure L, for declaratory and Injunctive Relief. W. Keith Lemieux, Lemieux & O'Neill, appeared for Defendant, City of California City, and Plaintiff N.L. Neilson, apeared in pro per.

The Court having considered the testimony, declarations and exhibits and good cause appearing therefore, issues the following decision and order:

The Court accepted for filing plaintiff's First and Second Amended Complaint although no leave was previously granted to file the Second Amended Complaint on the grounds that there was no objection from the City. The City's request for judicial notice is granted.

Plaintiff has failed to state facts sufficient to constitute a cause of action against the City on grounds that the special tax at issue is

legally valid. The Court's ruling is based upon the following findings:

1. It is clear on the allegations contained in the Complaint and the documents presented by the City that the tax at issue is a special tax, not an ad valorem tax, excise tax, special assessment, or a fee suggested by Plaintiff. Plaintiff has admitted that the tax was adopted by a 2/3 vote of the electorate of the City. It is therefore a valid tax under California law.

2. Based on the resolution adopting and improving the tax, it is clear that the tax at issue is a special tax and not a general tax as suggested by the plaintiff in his First Amended Complaint. The tax at issue was dedicated to specific purposes such as police and fire protection and was placed in a segregated account for use only for these limited purposes. This is sufficient to determine that the tax was a special tax.

3. Plaintiff's allegations that the City was required to canvass the vote of parties located beyond the geographical bounds of the City or from parties who are not natural persons are without merit. From the facts alleged in the Complaint, the City properly conducted the election pursuant to the election code.

Based on the foregoing, this Court grants the City's Demurrer without leave to amend.

IT IS SO ORDERED

Dated: 11-19-04

JOHN I. KELLY
JUDGE OF THE SUPERIOR COURT

Filed Nov 28 2005

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIFTH APPELLATE DISTRICT

N. L. NEILSON,

Plaintiff and Appellant,

v.

CITY OF CALIFORNIA CITY,

Defendant and Respondent.

F046860

(Super. Ct. No. CV253401)

The petition for rehearing by appellant in the above entitled is denied.

DAWSON, J.

WE CONCUR:

HARRIS, Acting P.J.

LEVY, J.

Court of Appeal, Fifth Appellate District - No. F046860

S139585

IN THE SUPREME COURT OF CALIFORNIA

En Banc

N. L. NEILSON, Plaintiff and Appellant,

v.

CITY OF CALIFORNIA CITY, Defendant and Respondent.

Petition for review DENIED.

FILED

FEB 22 2006

Chief Justice

(1)

Supreme Court, U.S.
FILED
JUN 13 2006
OFFICE OF THE CLERK

No. **05-1488**

In The

SUPREME COURT OF THE UNITED STATES

N.L. NEILSON,

Petitioner,

v.

CITY OF CALIFORNIA CITY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOR THE FIFTH APPELLATE DISTRICT

BRIEF OF *AMICUS CURIAE* AARON L. KATZ IN SUPPORT OF PETITIONER N.L. NEILSON'S PETITION FOR WRIT OF CERTIORAI

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Amicus Curiae in Propria Persona

QUESTIONS PRESENTED FOR REVIEW

Although Petitioner recites that one of his questions presented for review is the appropriate level of judicial scrutiny, *amicus curiae* is of the opinion the following more global questions are encompassed therein:

I. DOES THE VOTING SCHEME FOR A DISCRETE ISSUE ELECTION THAT EXCLUDES THOSE ELECTORS MOST PRIMARILY, DIRECTLY AND SUBTANTIALLY AFFECTED VIOLATE EQUAL PROTECTION?

II. IS THERE A "BLANKET RULE" THAT RESIDENCY LIMITATIONS ARE *ALWAYS* PERMISSIBLE TO EXCLUDE PRIMARILY, DIRECTLY AND SUBSTANTIALLY AFFECTED ELECTORS, ESPECIALLY IN DISCRETE ISSUE ELECTIONS MANDATED BY LAW?

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae owns several properties in Santa Clara County, California[2]. Since some are located within revenue districts *other than* the one in which he resides, whenever a "county, city...special district, or any other local or regional governmental entity" [Article XIIIC, §1(b) of the California Constitution[3]] within one or more of these districts proffers a new special tax measure, he is prevented from voting. Therefore just like Petitioner, *amicus curiae* is a member of an insular group foreclosed hopelessly from the political process [*Bjornestad v. Hulse* (1991) 229 Cal.App.3rd 1568, 1592 (*Bjornestad*)]; classic *Taxation Without Representation*.

Because of the foregoing, *amicus curiae*, like Petitioner, has challenged the results of five separate special tax/bond elections [in Santa Clara County] upon Equal Protection grounds[4]. He also sought and secured Court of Appeal permission [A1] to join Petitioner as an *amicus curiae*.

The Opinion has/continues to have a negative impact on the sustainability of *amicus curiae*'s other pending cases as it has/currently is being used against him as precedent. Thus *amicus curiae* has a very real interest in the Petition.

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[1] Blanket consents indicating the parties' approval for the filing of this *amicus curiae* brief are filed contemporaneously with the Clerk of this Court. No counsel for any party authored this brief in whole or in part, nor has any person nor entity other than *amicus curiae* made monetary contribution towards the preparation or submission of this brief.

[2] The City of California City is located in one of California's 58 counties [Exhibit "G" to *amicus curiae*'s Motion for Order Judicially Noticing Designated Materials Incorporated Into His Proposed *Amicus Curiae* Brief filed in the Court of Appeal on February 16, 2005 ("RJN")]; Kern.

[3] Future references to the California Constitution are by Article, § *only*.

[4] A21 and A15 (fn 5) of the Court of Appeal's Opinion ["the Opinion"] memorialize *amicus curiae*'s equal protection and other arguments.

INTRODUCTION

The Petition is warranted because the Court of Appeal has decided an important federal question ["the residency requirement that limited who could vote on Measure L did *not* violate the equal protection clause of the United States Constitution" (A24)] in a manner that conflicts with relevant decisions of this Court which follow.

PROLOGUE

In response to rapidly rising real property taxes [*Nordlinger v. Hahn* (1992) 505 U.S. 1 (*Nordlinger*)], in 1978 voters by initiative made California the *first* state in the Union to impose *limits* on government's ability to impose new taxes against property [*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 839] by adopting Proposition 13 [Article XIIIA]. In the wake of court decisions holding Proposition 13 did not apply to special assessments, local governments went hog-wild. Where once limited to financing streets, sidewalks, sewers and other capital improvements directly benefiting property, new assessments soon began to be imposed for general governmental services [*Howard Jarvis Taxpayers Assn. v. City of Riverside* (1999) 73 Cal.App.4th 679, 686]. Consequently in 1996 voters took step two in the Proposition 13 process [again by initiative] by adopting Proposition 218 [Articles XIIIC, XIIID] which placed analogous *limits* on property assessments, fees and charges [*Id.*, at 682-83].

Today Article XIIID, §3(a) states "no tax, assessment, fee [n]or charge shall be assessed by *any* agency upon *any* parcel of property or...*any* person as an incident of property ownership except: (1) the *ad valorem* property tax imposed [by]...Article[s] XIII and Article XIIIA; (2) any special tax receiving a two-thirds vote pursuant to §4 of Article XIIIA; (3) assessments as provided by...Article [XIIID, §4]; or, (4) fees/charges for property related services

as provided by...Article [XIIID, §6]." Given the maximum *ad valorem* tax rate stands at 1% [Article XIIIA, §1] of acquisition-value [*Nordlinger*, *supra*, at 505 U.S. 16], Article XIIIA, §4 special taxes have become one of local revenue districts' few remaining tax vehicles, and the one of choice[13].

California is divided into 6,500 or more revenue districts[5]. These districts consist of 58 counties[2], 551 cities, 1,055 K-12 public school districts, 72 community college districts and 4,763 independent special districts[6] ["any (*other*) agency of the state for the local performance of governmental or proprietary functions within limited boundaries" {California Government Code §16271(d)}]. After Proposition 13, property taxes were collected by counties and apportioned according to law [California Government Code, §26912] *to each of these districts* [*County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1451-52]. Since *each* has substantially the same general power as most local governments, under Proposition 13 *each* may levy Article XIIIA, §4 special taxes.

But because of the seemingly insurmountable hurdle of Article XIIIC, §2(d) ["no local government may impose, extend, or increase *any* special tax *unless* and *until* (it)...is submitted to the electorate and *approved by a two-thirds*

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[5] Exhibit "K" to RJN.

[6] Each year California's State Controller publishes an Annual Report that highlights the financial activities of California's special districts [fire and police protection; waste, water and irrigation systems; parks and recreation; libraries; hospitals; cemeteries; airports; marinas; zoos; open space, vector control and veterans memorial districts; etc.]. The latest report [as of June 30, 2003] for which financial information is available states there are 4,763 special districts [www.*sco.ca.gov/ard/local/locrep/districts/02-03/0203specialdistricts.pdf*)] in California.

vote"[7]], initially special taxes were rarely imposed, remained novel and were *not* perceived as a practical means of financeing [*Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3rd 878, 882]. However in a remarkable turn of events, local agencies of government have discovered that by manipulating the electoral process [removing those electors *most* primarily, directly and substantially affected by a special tax measure election, and the ones *most* likely to vote *no*[8]], they can accomplish that which was at first thought insurmountable[9].

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[7] Parenthetically, Article XIIIA, §§1(b)(2) and (b)(3) *ad valorem* taxes levied to pay the interest and redemption charges on bonded indebtedness for the acquisition or improvement of property also require voter approval [as do Article XIIID, §4 assessments and §6 fees/charges].

[8] California Government Code, §50079(b) exempts senior landowning residents from paying qualified special taxes. Although *amicus curiae* takes no issue with extending a tax exemption to senior landowners ["in structuring internal taxation schemes...states have large leeway in making classifications and drawing lines which, in their judgment, produce reasonable systems of taxation" {*Williams v. Vermont* (1985) 472 U.S. 14, 22}], he very much takes issue with allowing and encouraging them to vote for their approval [California Elections Code, §18521 makes it unlawful for any person to receive *any* valuable consideration ("a tax exemption has much *the same effect* as a cash grant...of the amount of tax (the exemptee)...ha(s) to pay" {*Regan v. Taxation With Representation of Wash.* (1983) 461 U.S. 540, 544})] for voting or refraining from voting on an election measure. Furthermore as *Carrington v. Rash* (1965) 380 U.S. 89, 94 (*Carrington*) instructs, "fencing out from the franchise *a[ny]* sector of the population because of the way they may vote is constitutionally *impermissible*."

[9] In *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* ["the OSA"] (2005) 130 Cal.App.4th 1295, 1351 (fn 12) [although on review to the California Supreme Court, it is *not* cited for the rule of law declared but rather a factual admission by an agency of government] the OSA "in its respondent's brief [admitted that] in Santa Clara County...40% of...registered voters are *not* property owners]. Thus]... it may ...be...*easier* to obtain a 2/3 vote of registered voters than a weighted majority vote of property owners."

Unlike Cipriano v. City of Houma (1969) 395 U.S. 701 (*Cipriano*) and *City of Phoenix v. Kolodziejski* (1970) 399 U.S. 204 (*Phoenix*), in this case the *only* persons who pay the subject special taxes[10] are owners of property within Respondent's boundaries [California Government Code, §50077(b)]. Yet according to the Court of Appeal [A18], the *only* persons who were allowed to approve these taxes were ordinary registered voters[11], *whether or not landowners*[12]. This type of voting scheme helps explain the recent explosion in special tax ballot measures which are relentlessly bombarding landowners across California[13]. "California's grand experiment" [*Nordlinger, supra*, at 505 U.S. 18] *has evolved into a crisis of constitutional proportion.*

THE CONUNDRUM PRESENTED BY THE PETITION

Given the Measure L election was mandated by law [California Government Code, §50077(a)]; 40% or more of

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[10] Here an annual special tax of $75 per lot or parcel was proposed to be levied and collected on *the property tax roll* [§2 at A4].

[11] Citizens over age 18 who have registered to vote for/against legislators in primary or general elections [California Elections Code, §321].

[12] Although *California Building Industry Assn. v. Governing Board of the Newhall School District* (1988) 206 Cal.App.3rd 212, 237 declares Article XIIIA, §4 special taxes are those approved by voters *who themselves will be taxed*, since "voters are often *not* willing to impose taxes on themselves,...here in an unsurprising result [they]...gladly impose[d] taxes" *someone else* "alone [had to]...pay. [Although] this was directly at odds with the purpose and intent of [Article XIIIA,] §4's supermajority requirement," according to the Court of Appeal, there was no equal protection violation.

[13] *Amicus curiae* asks the Court examine just one election [November 2, 2004] in just one of California's 58 [Exhibit "G" to RJN] counties [Santa Clara]. 13 different ballot measures; each proposing local landowners *only* be taxed [either by special tax (Article XIIIA, §4), assessment (Article XIIID, §6) or *ad valorem* tax to repay general obligation bonds (Article XIIIA, §1)]; and, each employing the challenged voting scheme.

those voting[7] were *residents qua residents*[14] [*Salyer Land Co. v. Tulare Water District* (1973) 410 U.S. 719, 729-30 (*Salyer*)]; 90% or more of those most primarily, directly and substantially affected[15] were *excluded* from the Measure L election's voting scheme[16]; and, the Court of Appeal employed rational basis review [A22]; and it is hard to imagine how Petitioner *could not* have been *more disproportionately* impacted[25] [*Kramer v. Union Free School District No. 15*[17] (1969) 395 U.S. 621, 633 (*Kramer*)]. In fact it raises the more fundamental question, *why even go through the artifice of an election*?

Although Proposition 13 "change[d] the previous system of real property taxation and...procedure [in California] by imposing important *limitations* on the assessment and taxing powers of state and local governments" [*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3rd 208, 218 (*Amador*)], surprisingly[18] the Peti-

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[14] Because the subject special taxes "primarily affect land within [Respondent's] boundaries[10] [there was]...no way...the economic burdens of [those taxes could possibly]...fall on *residents qua residents*."

[15] Natural person residents owning more than a single parcel, and non-citizen, non-natural person resident and nonresident landowners.

[16] "We have over 50,000 privately-owned subdivided lots...and approximately 3,800 registered voters...This means...*every* voter who votes...carries over *ten times the taxing power*...because *every one* of those property owners supports the city *with their special tax payments*"[10] [A3]

[17] Even though *Kramer* did *not* involve a discrete issue election, in *Phoenix* where such an election *was* at issue, this Court declared "the principles of...*Kramer* dictate a *like result* [because]...the differences between the interests of property owners and...nonproperty owners are *not* sufficiently substantial to justify excluding [*either*] from the franchise" [*Phoenix*, *supra*, at 399 U.S. 208-209, 210].

[18] Maybe *not* so surprising given *where else* must an agency of government obtain "qualified elector" approval as a pre-condition to levying new taxes against property?

tion is one of first impression [A23]. Although "problems... respecting the interpretation of particular provisions [of Article XIIIA were]...deferred for [later] resolution" [*Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3rd 197, 201] "in future cases [where their] application... were at issue" [*Amador, supra*, at 22 Cal.3rd 247], Mr. Neilson is apparently the first to challenge on equal protection grounds, Proposition 13's voting scheme.

Given the distinction between *general* and *discrete issue* elections [see Argument I, *infra* (below)],

General Elections: *Amicus curiae* is aware of cases addressing exclusion of: residents neither primarily affected nor impacted by landowner *only* voting schemes [*Salyer, supra*, at 410 U.S. 730; *Associated Enterprises, Inc. v. Toltec District* (1973) 410 U.S. 743 (*Associated Enterprises*); *Ball v. James* (1981) 451 U.S. 355, 367 (*Ball*)]; landowners neither primarily affected nor impacted by resident *only* voting schemes [*Burrey v. Embarcadero Mun. Improvement Dist.* (1971) 5 Cal.3rd 671; *Curtis v. Board of Supervisors* (1972) 7 Cal.3rd 942; *Erven v. Board of Supervisors* (1975) 53 Cal.3rd 1004, 1017]; and, *both* residents [*Choudhry v. Free* (1976) 17 Cal.3rd 660, 666] and landowners [*Bjornestad*] equally affected by intermediate voting schemes.

Discrete Issue Elections: Although *amicus curiae* is aware of cases addressing exclusion of residents primarily affected or impacted by landowner *only* voting schemes [*Cipriano* and *Phoenix*], until now he knew of *none* addressing exclusion of landowners primarily affected or impacted by a resident *only* voting scheme in a *discrete issue* election. This helps to explain why "the [Petition]...does *not* fit neatly into any established analytical mold" [*Hoffman v. State Bar of California* (2005) 113 Cal.App.4th 630, 640 (*Hoffman*)].

As more states follow California's "grand experiment" [*Nordlinger*, *supra*, at 505 U.S. 18] by adopting their own Proposition 13s, the constitutional crisis which *amicus curiae* raises is destined to become more widespread.

STATEMENT OF THE CASE

Although Petitioner has presented a Statement of the Case below, *amicus curiae* is of the opinion it omits important facts that demonstrate the *disproportionate* nature of the challenged voting scheme[19]. For instance, Respondent exhibits an adult population of roughly 5,800 [Exhibit "A" to RJN] who reside in a very small portion of a 203 square mile municipality[20] [Exhibit "F" to RJN] in the Mojave Desert [Exhibit "E" to RJN]. Of the "over 50,000 privately-owned subdivided lots" [Petitioner's Appendix filed with the Court of Appeal ("AA") 59], 2,820[21] are occupied housing units [Exhibit "B" to RJN]; a sprinkling [commercial/industrial] are non-housing units; and, a whopping 50,000 are unimproved lots *in the desert* mostly owned by nonresidents.

Since Measure L taxes parcels in *rem* rather than persons in *personam*[10], if the owner[s] of each city parcel had been assigned one vote, Respondent's population would represent 1,950 votes. Non-natural person and non-citizen

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[19] *Amicus curiae* believes recognizing the *disproportionate* nature of Respondent's voting scheme[25] is critical to resolving the equal protection issue presented because as *Hadley v. Junior College District* (1970) 397 U.S. 50, 56 (fn 6) (*Hadley*) instructs, the one-person, one-vote principle announced in *Reynolds v. Sims* (1964) 377 U.S. 533, 558 (*Reynolds*) is "*not*...required [in] a popular election [where the]... State elects certain functionaries [which]...so *disproportionately* affect different groups."

[20] By land mass, the third *largest* in California.

[21] 226 occupied housing units were mobile homes which were *not* taxed by Measure L[10] [AA 69, ¶2; AA 75, ¶3; AA 81, ¶2; §§1, 2 and 5 at AA 85-86]. One-third of Respondent's housing units were tenant-occupied [Exhibit "C" to RJN] by a third of the population [Exhibit "D" to RJN].

resident and nonresident landowners on the other hand, would represent roughly 50,000 votes. Thus by crafting a voting scheme whereby the votes of persons rather than the parcels they represented[26] were canvassed, roughly 3,800[22] registered voters[23] [AA 59 (of which roughly 1,265 were non-landowners)], were able to determine the tax fate of approximately 50,000 parcels. Although Respondent unabashedly exploited the effects of this classification in the voters pamphlet by asserting the weight of each vote represented *ten times*[16] the taxes to be imposed[24], in actuality, it was closer to *twenty-five times*[25]! In other words, Respondent manipulated the voting weight of those primarily affected by imposing 95% of the cost for general governmental services onto 90% of those *excluded* from its voting scheme!

Respondent *cannot* argue nonresident landowners were *not* primarily affected by the Measure L election because along with natural person resident landowners, they

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[22] Given the election's results [A5], only 1,609 registered voters. And given Measure L passed by just 54 votes [1,128 "yes" versus 481 "no" votes], its *disproportionate* impact on landowners could not be clearer[25].

[23] *Reynolds*, *supra*, at 377 U.S. 562, 568 declares "qualified electors" not only have the constitutional right to vote [*Id*., at 377 U.S. 554, 562; *Hadley*, *supra*, at 397 U.S. 52], but to *not* have their votes wrongfully denied, debased or diluted [*Avery v. Midland County* (1968) 390 U.S. 474, 480]. Measure L's voting scheme wrongfully debased and diluted the weight of *other* qualified electors' [resident landowners'] votes.

[24] "How...can one person be given...ten times the voting power of another[16] in a statewide election merely because he lives in a rural area or ...in the smallest rural county" [*Gray v. Sanders* (1963) 372 U.S. 368, 379 80]?

[25] Substantiating *amicus curiae*'s assertion Measure L's voting scheme *disproportionately* impacted the class of voters most directly, primarily and substantially affected. "Application of the per capita voting scheme--the 'one person, one vote formula [Respondent] contend[s] is required... produced an anomalous *disproportionality*" [*Not About Water Committee v. Solano County Board of Supervisors* (2002) 95 Cal.App.4th 982, 1000]

were the *only* persons directly affected[10] [California Government Code, §50077(b); §2 at AA 81; 85-86].

LEGAL ARGUMENTS

I. *NOT* ALL ELECTIONS ARE THE SAME.

The first problem with the Court of Appeal's analysis of the issues raised by the Petition is its failure to account for the fact *not all elections are the same.* Consequently the constitutional rules that govern elections are *not all the same.* This Court recognized the distinction when it decided *Lockport v. Citizens for Community Action* (1977) 430 U.S. 259 (*Lockport*). For the reasons *amicus curiae* asserts, this Court declared discrete issue elections should be viewed *differently* than those for/against legislators because sometimes elections involve "tress and acres" rather than "people"[26] [*Id.*, at 430 U.S. 261]. When a discrete issue election like Measure L directly impacts property rather than people, the one-person, one-vote principle[19] quickly loses its appeal.

II. VOTING SCHEMES FOR DISCRETE ISSUE ELECTIONS WHICH *EXCLUDE* THOSE ELECTORS MOST PRIMARILY, DIRECTLY AND SUBSTANTIALLY AFFECTED ARE SUBJECT TO HEIGHTENED REVIEW.

Lockport declares that "in analyzing the propriety of recognizing distinctive voter interests in a 'single-shot' referendum...equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives *are of limited relevance*[27]...because a "refer-

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[26] In contrast, the election in *Reynolds, supra*, at 377 U.S. 562 was about "people" rather than "trees and acres."

[27] In pointing to *Hoffman* ["a very useful introduction and summary of the law regarding equal protection and the right to vote" (A19)], these are the very "limited relevant" principles the Court of Appeal adopted.

endum puts one discrete issue to the voters [which]...is capable...of being analyzed to determine whether its adoption or rejection will have a *disproportionate impact* on an identifiable group of voters. [When] it [does,]... the question then is whether [the] State can recognize that impact either by limiting the franchise to those voters specially affected or by giving their votes a special weight" [*Id.*, at 430 U.S. 266].

The Measure L election's voting scheme had a *disproportionate* impact on an identifiable group of voters[25] [landowners within Respondent's boundaries] because they were the *only* persons directly to be taxed[10], yet by-and-large the ones excluded from voting. Thus the question: were its classifications "tailored so that the exclusion of [Petitioner] and members of his class [were] necessary to achieve [an] articulated state goal" [*Kramer*, *supra*, at 395 U.S. 632]? The second problem with the court of Appeal's analysis of the issues raised by the Petition is it *never* considered the true impact of the Measure L election on landowners.

III. THERE IS NO "BLANKET RULE," ESPECIALLY WHEN IT COMES TO DISCRETE ISSUE ELECTIONS MANDATED BY LAW, THAT RESIDENCY LIMITATIONS ARE *ALWAYS* PERMISSIBLE TO *EXCLUDE* ELECTORS; EVEN WHEN THEY ARE *MOST* PRIMARILY, DIRECTLY AND SUBSTANTIALLY AFFECTED.

The third problem with the Court of Appeal's analysis of the issues raised by the Petition is it in essence adopts a blanket rule[28] that *regardless* the election involved,

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[28] First it "conclude[d] the rational basis test should apply" [A22]. Although Respondents offered no explanation of reasons for excluding Petitioner from its voting scheme, the Court of Appeal conjectured it "*could have determined* [its]...residents [we]re most knowledgeable and inter-

residency restrictions can *always* be used to *exclude* possible electors, even where they are the ones *most* primarily, directly and substantially affected [*Kramer*] by an election issue. This so called rule comes from the Court of Appeal's *mistaken* analysis [AA20] of *Holt Civic Club v. City of Tuscaloosa* (1978) 439 U.S. 60 (*Holt*).

Rather than involving a "discrete issue" election [*Lockport*], let alone one that proposed imposing a tax on landowners *only*, *Holt* involved a challenge to the franchise in *general* elections – extension of equal footing to Holt residents with those residing within Tuscaloosa because the former were purportedly subjected to the latter's extra-territorial exercise of police powers. Thus it was a mistake for the Court of Appeal to extend *Holt*'s reasoning to the subject "discrete issue" case[29].

Moreover, a careful reading of the dissent in *Holt* makes the case either there is *no such* "blanket rule" [*Holt*, *supra*, at 439 U.S. 81-88], or if there is, it *only* applies where *bona fide* residency restrictions are imposed [*Dunn v. Blumstein* (1972) 405 U.S. 330, 343]. Here Respondent's voting exclusions based upon residency were *not bona fide* because the "reciprocal relationship between the process of government and those who subject[ed] themselves to that process by choosing to live within the area of its authoritative application [was] fractured [and]...*undermine*[*d*] the very purposes which have led this Court...to approve the application of *bona fide* residency requirements" [*Holt*, *supra*, at 439 U.S. 82]. Thus "when statutes distributing the franchise depend

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ested in all aspects of local affairs, on both the revenue and expenditure side of the ledger" [A24]. Using this litmus test, it is difficult to imagine *any* residency based voting limitation *not being constitutional*.

[29] Parenthetically and for the same reasoning, it was just as wrong for the Court of Appeal to extend the reasoning of *Hoffman*[27] to the subject case.

upon residency requirements, state-law characterizations of residency are *not controlling* for purposes of the Fourteenth Amendment" [*Carrington*, *supra*, at 380 U.S. 96; *Evans v. Cornman* (1970) 398 U.S. 419, 421].

Finally, the Court of Appeal overlooked an aspect of *Holt* of particular relevance to the subject review which *should have* changed the outcome. "In a footnote (*Holt*) *did* distinguish the...situation [therein] from [the one presented by this Petition"]; a city which exercise[s] *all* of its [traditional] powers" [such as the "power...to levy *ad valorem* taxes, invoke the power of eminent domain, and zone property for various types of uses" {also see *Hoffman*, *supra*, at 113 Cal.App.4th 645 (fn 9)}] over nonresidents [*Holt*, *supra*, at 439 U.S. 73 (fn 8), 75, 84-85]. Here Petitioner *was* subject to Respondent's "far-reaching" powers to levy *ad valorem and* special taxes against his property; invoke eminent domain; and, zone his property for various types of uses. Thus *unlike* the plaintiffs in *Holt*, Petitioner *was* entitled to complain of unequal voting scheme treatment.

IV. SINCE THERE ARE *ONLY* TWO SUPREME COURT CASES WHICH HAVE REVIEWED THE IMPACT OF DISCRETE PROPERTY TAX ISSUE ELECTIONS ON NON-LAND-OWNING RESIDENTS/NONRESIDENT LANDOWNERS, *THESE ARE THE CASES* WHICH SHOULD GUIDE THE COURT IN THIS REVIEW.

If we are to examine voting schemes for discrete issue elections *differently* from those for/against legislators [as *Lockport* instructs], then in this case we must *limit* our inquiry to just those "discrete issue" election cases which proposed imposing new exactions against property and here *there are only two*: *Cipriano* and *Phoenix*. But before examining these two cases, *amicus curiae* refers to three others

which address the right of landowners to vote where they are the *only* persons primarily, directly and substantially affected by an election's outcome.

In *Salyer* non-landowning residents challenged upon equal protection grounds the validity of a landowner *only* voting scheme for a water storage district's *general* elections. Because there "the operations of the district...*primarily affected* land within [its] boundaries;" and as such, there was "no way...the economic burdens of district operations [could] fall on *residents qua residents*;" this Court concluded "the popular election requirements enunciated in *Reynolds*... and succeeding cases [we]re *inapplicable*" [*Salyer*, *supra*, at 410 U.S. 729-730].

"*Salyer*...is analytically linked to th[is] Court's subsequent decision in *Ball*...On facts strikingly different... th[is] Court reached an *identical* result, ruling...the principle of *Reynolds*...did *not* apply to a [*general*]...election ...of...a water reclamation district...[since] the reclamation district's activities fell *disproportionately* on the specific class which the statutory voting scheme enfranchised...[Thus this Court ruled] 'the [landowner *only*] voting scheme...[*was*] constitutional because it b[ore] a reasonable relationship to its statutory objectives'...[In other words,] *only* [landowners] were subject to the acreage-based taxing power of the district, *only* they had committed capital to the district through assessments, and *only* their land was subject to liens to secure district bonds" [*Southern Cal. Rapid Transit Dist. v. Bolen* (1992) 1 Cal.4th 654, 667-68 (*SCRTD*)].

"A third decision in the trilogy of high court opinions upholding property-based voter qualification schemes bears mention. In *Associated Enterprises*...th[is] Court, in a brief *per curiam* ruling decided the same day as *Salyer*...held that a...statute conditioning voting...did *not* violate equal pro-

tection...in a referendum authorizing the establishment of a watershed district on property ownership" [*SCRTD, supra*, at 1 Cal.4th 669 (fn 5)].

These three cases make clear [especially in light of *Ball*] that *rather than residency*, the constitutionally decisive factor is whether the voting scheme reflects the "narrow primary purpose for which the [public entity] was created?"[30]

In *Cipriano* a landowner *only* voting scheme for a "discrete issue" revenue bond election [which would tax local property owners] was declared invalid *not* because it impermissibly denied the franchise to nonproperty owning residents *in their capacity as residents* [i.e., *Reynolds*]; but because the subject revenue bonds were to be paid from utility operations. Since both property owners and non-property owners used those utilities and paid their rates, this Court concluded *both* were *primarily, directly and substantially affected* [*Kramer*]; and, the *impact* of the revenue bond issue on them was *unconnected* to property taxpayer status [*Cipriano, supra*, at 395 U.S. 706-07].

Similarly in *Phoenix* a landowner *only* voting scheme for a "discrete issue" general obligation bond election [which in part taxed local property owners] was challenged by non-landowning residents and declared invalid *not* because it

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[30] "No one reviewing this area of the high court's equal protection jurisprudence can fail to be impressed with the result in *Ball* – not because the opinion represents an analytical advance over the principles developed in *Salyer* but because it illustrates the majority's steadfast willingness to adhere to the *Salyer* analysis...Clearly in light of *Ball*, the... constitutionally decisive fact [distinctions between governmental function 'do *not* amount to a constitutional difference' (*Ball, supra*, at 451 U.S. 365-66)] is that the voting scheme at issue reflect...the 'narrow primary purpose for which the [public entity wa]s created' (citing *Ball, supra*, at 451 U.S. 369)" [*SCRTD, supra*, at 1 Cal.4th 668-69].

impermissibly denied the franchise to nonproperty owning residents *in their capacity as residents* [i.e., *Reynolds*], but because the "differences in interests of property owners and nonproperty owners were *not* sufficiently substantial to justify excluding nonproperty owners from voting." In other words, residents [because they *too* paid {more than half of the bonds' debt service requirements were satisfied from *other* local taxes paid by nonproperty owners (*Phoenix*, *supra*, at 399 U.S. 209-10)}] *as well as property owners* were *both primarily, directly and substantially affected* [*Phoenix*, *supra*, at 399 U.S. 212-13].

Thus *Cipriano* and *Phoenix* make clear that *rather than residency*, the constitutionally decisive voting scheme factor in "discrete issue" election cases "is the *extent of the impact* of the election on those within and those outside the challenged voting classification" [*SCRTD*, *supra*, at 1 Cal.4th 671].

Here, it cannot be questioned that Respondent's decision to levy a special tax had a particular *impact* on an identifiable group of voters – *only* owners of property upon which the tax was to be imposed [*Id.*, at 1 Cal.4th 686]. "*All* of the costs of [the subject special taxes...we]re assessed against land[10]...[and] when [landowners we]re delinquent in payment...such charges bec[a]me a lien on the[ir] land[s]." Since the subject special taxes "*disproportionately* affect[ed] landowners"[25] *only* [*Salyer*, *supra*, at 410 U.S. 729], if it was improper to deny the franchise to non-property owners in *Cipriano* and *Phoenix*, it was equally improper to deny it to nonresident landowners in the subject case.

V. VOTING SCHEMES THAT *EXCLUDE* THOSE ELECTORS MOST PRIMARILY, DIRECTLY AND SUBSTANTIALLY AFFECTED BY A DISCRETE ISSUE ELECTION ARE *NOT* PRESUMED TO BE CONSTITUTIONAL.

As a general rule "legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality" [*McGowan v. Maryland* (1961) 366 U.S. 420, 425-26]. However that presumption is *not* the case when *as here* a classification jeopardizes the exercise of a fundamental right[31] [*Nordlinger*, *supra*, at 505 U.S. 10]. For this reason "in an election of [arguable] general interest, restrictions on the franchise *of any character must* meet a *stringent test* of justification" [*Hill v. Stone* (1975) 421 U.S. 289, 298. And in an election of special interest, restrictions on the franchise must meet the "narrow primary purpose for which the" public entity was created[30] test. Under either, the subject voting scheme *fails*.

The strict standard of review has long been held to apply to voting legislation which *excludes* [rather than includes] an "identifiable class" of voters [*Gordon v. Lance* (1971) 403 U.S. 1, 7] from participation [*Kramer*[17], *supra*, at 395 U.S. 627-28, 632, 638-39; *Cipriano*, *supra*, at 395 U.S. 704; *Phoenix*, *supra*, at 399 U.S. 209]. Although not every classification is subject to strict scrutiny review, the "compelling interest" measure *must* be applied whenever a classification has a "real and appreciable [as opposed to 'only minimal'] impact" upon the equality, fairness and integrity of the electoral process" [*Bullock v. Carter* (1972) 405 U.S. 134, 144]. Given here Respondent's non-landowning residents were *less* interested and affected by Measure L than landowners of all kinds [because *only* landowners would pay[10]],

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[31] The right to vote is considered fundamental and preservative of other basic political rights[22] [*Reynolds*, *supra*, at 377 U.S. 562].

the subject voting scheme was "*not* sufficiently tailored to... justify the denial of the franchise to [Petitioner] and members of his class."[32]

VI. ASSUMING *ARGUENDO* THE SUBJECT VOTING SCHEME IS SUBJECT TO RATIONAL BASIS REVIEW, RESPONDENT'S INTEREST IN MAKING NONRESIDENT LANDOWNERS PAY WAS *NOT* A JUSTIFIABLE BASIS.

The "rational basis" test merely requires that a challenged "voting scheme not be 'wholly irrelevant' [or 'reasonably related'] to the achievement of [its statutory] objectives" [*Salyer*, *supra*, at 410 U.S. 730]. Here the Court of Appeal conjectured it was rational for Respondent to *exclude* 50,000 of the *most* primarily, directly and substantially electors because its residents were purportedly the most knowledgeable and interested in the city's revenue matters[28] [A24]. Stated differently, it was purportedly rational for Respondent to concoct a voting scheme that ensured nonresident landowners [versus its non-landowning residents] would be the ones to subsidize the cost of Respondent's general governmental services. *Amicus curiae* contends this reasoning is arbitrary, capricious and bears no reasonable relationship [*Salyer*] to the objective of generating revenue from sources that directly impact *all* residents. Furthermore Respondent's voting scheme was really a thinly veiled means of impermissibly excluding otherwise "qualified electors" simply because of the way Respondent perceived they would vote[8].

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[32] Strict scrutiny review was employed in *Cipriano* and *Phoenix* not because their voting schemes excluded non-landowning residents but rather, because there was no basis for concluding nonproperty owners were substantially less interested in the subject bonds as property owners [*Cipriano*, *supra*, at 395 U.S. 706-07; *Phoenix*, *supra*, at 399 U.S. 212].

In considering what represents "rational or reasonable" considerations for equal protection tax purposes, this Court weighed in on the subject in *Nordlinger*, *supra*, at 505 U.S. 13. There this Court acknowledged California's distinction between new and existing property owners. Whereas "a new owner has full information about the scope of *future tax liability before* acquiring...property...[in] contrast, the *existing owner, already saddled with his purchase*, does *not* have [an] option...if taxes become prohibitively high." In *Nordlinger* this Court recognized California's public policy that "it is worse to have owned and lost than never to have owned at all."

Being an existing property owner and having no option other than to lose, the Court of Appeal's conjectured reasoning[28] is now the exact *opposite* making the subject classification, *not* rationally related to the achievement of Proposition 13's objectives.

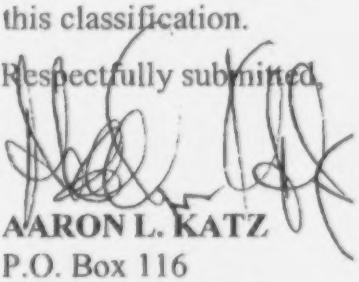
When the State's sole justification for excluding primarily, directly and substantively impacted electors from an election mandated by law is that the classification provides a "rational basis" for limiting the franchise to those voters with a "special interest," that justification does *not* meet the "exacting standard of precision we require of statutes which selectively distribute the franchise" [*Cipriano*, *supra*, at 395 U.S. 706].

CONCLUSION

Lockport, *supra*, at 430 U.S. 266 instructs that the question of whether a State can [or here *must*] recognize the *disproportionate* impact[25] of discrete issue elections has been confronted in two types of cases: elections involving "special-interest" governmental bodies of limited jurisdiction, and those dealing with bond referenda. Today this Court is presented with a third - the property tax referendum.

Amicus curiae prays this Court grants review to address the equal protection issues implicated by this classification.

Respectfully submitted,



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APPENDIX

FULL TEXT OF CITED STATE CONSTITUTION

Article XIIIA, §1 – "(a) The maximum amount of any *ad valorem* tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to *ad valorem* taxes or special assessments to pay the interest and redemption charges on any of the following:

(1) Indebtedness approved by the voters prior to July 1, 1978.

(2) Bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:

(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIIIA, §1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.

(B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.

(C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.

(D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects.

(c) Notwithstanding any other provisions of law or of this Constitution, school districts, community college districts, and county offices of education may levy a 55 percent vote *ad valorem* tax pursuant to subdivision (b)."

Article XIIIA, §4 – "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except *ad valorem* taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district."

Article XIIIC, §1 – "As used in this article:

(a) 'General tax' means any tax imposed for general governmental purposes.

(b) 'Local government' means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

(c) 'Special district' means an agency of the State, formed pursuant to general law or a special act, for the local

performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) 'Special tax' means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund."

Article XIIIC, §2 – "Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved."

Article XIIID, §3 – "(a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The *ad valorem* property tax imposed pursuant to Article XIII and Article XIIIA.

(2) Any special tax receiving a two-thirds vote pursuant to §4 of Article XIIIA.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership."

Article XIIID, §4 – "(a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e)."

Article XIIID, §6 – "(a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing

the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with §4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an

incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section."

FULL TEXT OF CITED STATE STATUTES

California Elections Code, §321 – "'Elector' means any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 15 days prior to an election."

California Elections Code, §18521 – "A person shall not directly or through any other person receive, agree, or contract for, before, during or after an election, any money, gift, loan, or other valuable consideration, office, place, or employment for himself or any other person because he or any other person:

(a) Voted, agreed to vote, refrained from voting, or agreed to refrain from voting for any particular person or measure.

(b) Remained away from the polls.

(c) Refrained or agreed to refrain from voting.

(d) Induced any other person to:

(1) Remain away from the polls.

(2) Refrain from voting.

(3) Vote or refrain from voting for any particular person or measure.

Any person violating this section is punishable by imprisonment in the state prison for 16 months or two or three years."

Government Code §16271(d) – "As used in this chapter…'Special district' means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. 'Special district' includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area.

County free libraries established pursuant to Chapter 2 (commencing with §27151) of Division 20 of the Education Code; areas receiving county fire protection services pursuant to §25643 of the Government Code; and county road districts established pursuant to Chapter 7 (commencing with §550) of Division 2 of the Streets and Highways Code, shall be considered 'special districts' for all purposes of this chapter.

'Special district' does not include a city, a county, a school district or a community college district. 'Special district' does not include any agency which is not authorized to levy a property tax rate, except the Bay Area Pollution Control District."

California Government Code, §26912 – "(a) For the purposes of this section, a local agency includes a city, county, city and county, and special district, as such terms

are defined in Article 1 (commencing with §2201) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code, if such local agency levied a property tax during the 1977-78 fiscal year or if a property tax was levied for such local agency for such fiscal year, except that the Bay Area Pollution Control District shall be considered a local agency.

(b) For the 1978-79 fiscal year only, the amount of revenue derived from levying a tax pursuant to subdivision (b) of §2237 of the Revenue and Taxation Code shall be allocated by the county auditor, subject to the allocation and payment of funds, as provided for in subdivision (b) of §33670 of the Health and Safety Code, to each local agency, school district, county superintendent of schools, and community college district in the following manner:

(1) (A) The auditor shall determine the local agency share of 1978-79 property tax revenue by dividing the amount of property tax revenue received by all local agencies in 1977-78 by the total amount of property tax revenue received by all local agencies, school districts, community college districts, and county superintendents of schools in the 1977-78 fiscal year, and multiplying the quotient by the total amount of revenue generated pursuant to subdivision (b) of §2237 of the Revenue and Taxation Code.

(B) For each local agency, the county auditor shall compute a factor equal to the average amount of property tax revenue received in the three fiscal years prior to the 1978-79 fiscal year by each local agency within the county, divided by the average amount of property tax revenue received by all such agencies during the three fiscal years prior to the 1978-79 fiscal year. The county auditor shall multiply the factor for each local agency by the amount of revenue determined pursuant to subparagraph (A).

(C) Notwithstanding subparagraph (B), in each case where a local agency has been formed in the past three years and has assumed the duties of another local agency, it shall be entitled to the average amount of revenue for the prior

three years of the local agency from whom it assumed its duties.

(D) For the purposes of subparagraphs (A) and (B), local agency shall not include a local agency formed after January 1, 1976.

(2) (A) The county auditor shall determine the school share of the 1978-79 fiscal year property tax revenue by subtracting the local agency share, as determined under subparagraph (A) of paragraph (1) of this subdivision, from the total amount of revenue generated pursuant to subdivision (b) of §2237 of the Revenue and Taxation Code.

(B) For each school district, county superintendent of schools, and community college district, the county auditor shall compute a factor equal to the amount of property tax revenue received in the 1977-78 fiscal year by such district and the county superintendent of schools within the county divided by the total amount of property tax revenue received by all such districts and the county board of education in the 1977-78 fiscal year. The county auditor shall multiply the factor for each school district, county superintendent of schools, and community college district by the amount of revenue determined pursuant to subparagraph (A). For the purpose of this paragraph, local agencies formed after January 1, 1976, shall be considered school districts.

(3) For the purpose of this subdivision, the amount of proceeds of any property tax actually and separately levied for the specific purpose of making annual payments for the interest and principal on outstanding general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978, including tax rates levied pursuant to Part 10 (commencing with §15000) of Division 1 of §§39308, 39311, 81338, and 81341 of the Education Code, shall be excluded from all calculations.

(4) The amounts computed under this subdivision shall be the amount of property tax revenue to be allocated to each local agency for the 1978-79 fiscal year.

(5) As used in this section, 'property tax revenue' includes the amount of state reimbursement for the homeowners' and business inventory exemptions.

(c) For the 1978-79 fiscal year only, the amount of state reimbursement to each county with respect to property tax losses pursuant to the homeowners' exemption under §218 of the Revenue and Taxation Code, the business inventory exemption under §219 of the Revenue and Taxation Code, and the special treatment accorded livestock, motion pictures and wine and brandy under §§5523, 988, and 992, respectively, of the Revenue and Taxation Code, shall be allocated by each county auditor, subject to the allocation and payment of funds, as provided in subdivision (b) of §33670 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts within the county pursuant to the proportions established in subdivision (b). This subdivision shall not apply to reimbursements with respect to tax rates levied to pay the interest or principal on outstanding general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978.

(d) For local agencies, school districts, and community college districts located in more than one county, the county auditor of each county in which such local agency or district is located shall, for the purposes of computing the amount for such local agency or district pursuant to paragraphs (1) and (2) of subdivision (b), treat the portion of the local agency or district located within that county as a local agency or district."

California Government Code, §50077 – "(a) Except as provided in §7282 of the Revenue and Taxation Code, the legislative body of any city, county, or district may, following notice and public hearing, propose by ordinance or resolution the adoption of a special tax. The ordinance or resolution shall include the type of tax and rate of tax to be

levied, the method of collection, and the date upon which an election shall be held to approve the levy of the tax. The proposition shall be submitted to the voters of the city, county, or district, or a portion thereof, and, upon the approval of two-thirds of the votes cast by voters voting upon the proposition, the city, county, or district may levy the tax.

(b) The legislative body of a city, or district, may provide for the collection of the special tax in the same manner and subject to the same penalty as, or with, other charges and taxes fixed and collected by the city, or district, or, by agreement with the county, by the county on behalf of the city, or district. If the special taxes are collected by the county on behalf of the city, or district, the county may deduct its reasonable costs incurred for the service before remittal of the balance to the city.

(c) The legislative body of a local agency which is conducting proceedings for the incorporation of a city, the formation of a district, a change of organization, a reorganization, a change of organization of a city, or a municipal reorganization, may propose by ordinance or resolution the adoption of a special tax in accordance with the provisions of subdivision (a) on behalf of an affected city or district.

(d) As used in this section 'district' means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

California Government Code, §50079 – "(a) Subject to §4 of Article XIIIA of the California Constitution, any school district may impose qualified special taxes upon the district pursuant to the procedures established in Article 3.5 (commencing with §50075) and any other applicable procedures provided by law.

(b) As used in this section, 'qualified special taxes' means special taxes which apply uniformly to all taxpayers

or all real property within the school district, except that 'qualified special taxes' may include special taxes which provide for an exemption from those taxes for taxpayers 65 years of age or older.

'Qualified special taxes' do not include special taxes imposed on a particular class of property or taxpayers."